

Time-brokering seen as FCC loophole

Time-brokering is a hot subject these days at the Federal Communications Commission and in Congress. Supporters see it as an avenue for diversity and a savior for small radio and TV stations. Detractors say it lets the FCC wink at its own policies.

"Time-brokering is nothing more than the FCC's ill-conceived attempt to circumvent its own rules," insists Frederick A. Polner, a former FCC attorney now practicing communications law in

in concept — LMAs are permissible and they will look at any actual problems that arise in practice," said Polner, speaking in general terms and not about the local arrangement.

"So if one station impermissibly controls the other station, then they will take action. But that's a very elusive and hard-to-enforce concept."

The difficulty in evaluating an LMA comes in discerning who's calling the shots. "The basic con-

be sold to any one programmer to 10 percent, and limit the total time a station can sell to 25 percent.

It turns out that KDKA-TV had entered into preliminary discussions with WPTT owner Eddie Edwards about buying the 10 p.m.-11 p.m. hour to air a KD news show. KD would have used a separate anchor and news set and tried to appeal to the early-to-bed audience.

KDKA's discussions abruptly came to an end, however, when it

Exhibit G

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February 19, 1992

Rm 222

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: FCC File No. BPH-911206IF

Dear Ms. Searcy:

This letter is submitted on behalf of Scripps Howard Broadcasting Company ("Scripps Howard") in opposition to the February 11, 1992 letter of Cunningham Communications, Inc. ("Cunningham") (copy enclosed) requesting that the Federal Communications Commission ("FCC" or "Commission") dismiss the above-referenced application of Nationwide Communications Inc. ("Nationwide"). In accord with Section 73.1690(b)(1) of the Commission's rules, Nationwide's application simply reports that the tower on which Nationwide's antenna rests has been reduced in height by forty feet and is now only 1209 feet above mean sea level.

Scripps Howard is interested in this matter because Cunningham's principals have filed a competing application against Scripps Howard's application for renewal of license for Station WMAR-TV in Baltimore. This competing application, filed under the

Ms. Donna R. Searcy
February 19, 1992
Page 2

Commission not to permit Cunningham's principals to benefit from their misconduct. Indeed, as shown below, sound agency practice requires that Nationwide's application be granted so that Cunningham's principals will not be permitted to escape appropriate administrative scrutiny of the Four Jacks application's proposal to add forty feet in height to an existing tower.

The first misstatement in Cunningham's letter is the claim that Nationwide, an FCC licensee, had no authority to correct erroneous information about its antenna tower's height. In fact, the FCC expressly requires its licensees to ensure that tower height data be kept accurate. See 47 C.F.R. §§ 73.1690(b)(1) and 17.7. Nationwide's application, which was filed contemporaneously with its notification to the FAA of the same facts, is the means specified by Section 73.1690(b)(1) for maintaining the accuracy of the FCC's antenna height records.

Cunningham's second misstatement is its false and dangerous suggestion that the FCC need not be advised of tower height reductions. No source is identified for the unsubstantiated claim in the February 11th letter that Cunningham was so "advised." In any event, the experienced communications counsel who filed Cunningham's letter is surely aware:

(1) that FCC and FAA rules make no distinction between height increases and decreases with respect to licensees' plain obligation to report all tower height alterations, see, e.g., 47 C.F.R. §§ 73.1690(b)(1), 17.7(a), 17.57, and 14 C.F.R. §§ 77.13(a)(1), 77.5(b); and

(2) that it is the Commission's unambiguous policy that tower height reductions as well as height increases may give rise to air hazard navigation issues, see, e.g., Abacus Broadcasting Corp., MM Dkt. No. 91-350, DA91-1481 (released December 5, 1991).

It is remarkable that Cunningham, an entity owned by principals who are both (1) applicants for a new FCC license and (2) current broadcast licensees, would present such a reckless and plainly false assessment of licensees' responsibilities.

Importantly, by its owners' own recent admission, Cunningham's tower apparently has been at a different height from that reflected in the FCC and FAA records for some period of time due to the actions of Cunningham's owners in relocating their Station WBFF-TV television antenna to a new location. See Four Jacks' Opposition to Petition to Deny (File No. BPCT-910903KE), filed February 12, 1992, at 4. Cunningham's principals wrongfully never reported that they had changed the tower's height either to the FCC, to the FAA,

Ms. Donna R. Searcy
February 19, 1992
Page 3

or to the National Ocean Service as required by FCC and FAA rules so that the tower's actual height would be accurately reflected in these agencies' databases and in the aeronautical charts based on these databases. This failure to keep the appropriate governmental bodies informed is a significant breach in Cunningham's owners' public interest responsibility (1) as the sponsor of the height change, see 14 C.F.R. 77.13(a)(1), and (2) as a Commission licensee, see 47 C.F.R. § 73.1690(b)(1) and § 17.57 (a rule whose express purpose is to protect "the interest of safety in air navigation").

Finally, Cunningham's February 11th letter misleadingly omits to disclose Cunningham's principals' true, improper purpose for seeking to have Nationwide's correction of the record dismissed. As noted above, it is Cunningham's owners themselves that are the undisclosed parties who filed the application (BPCT-910903KE) referenced in Cunningham's letter, the application on which their letter would have the FCC rely to find that no notification is required. Cunningham/Four Jacks thus is actually seeking to benefit from Cunningham's principals wrongful failure to report the change in tower height. By falsely claiming in its application that it would not raise the tower's height, Four Jacks seeks to avoid the regulatory scrutiny which necessarily attaches to proposals that would increase antenna heights.

It is axiomatic that an applicant cannot be permitted to benefit from its own blatant misconduct. This is particularly true here where the benefit which Cunningham's principals seek to obtain is the avoidance of procedures designed to protect the safety of life and property from air traffic hazards. For example, Cunningham's principals appear to be trying to avoid the necessity of advising the FAA that they propose to undertake new construction at the tower that will increase its antenna height with a transmitting antenna because, under standard FAA procedures, this will require an assessment of the electromagnetic interference that may occur from transmitting at the proposed frequency at the proposed location.

At a minimum, the Commission cannot permit Cunningham/Four Jacks to evade its obligation to comply with FCC and FAA procedures that exist to protect public safety. Nationwide's proper (though tardy) notification to the FCC as to the facts concerning the changed height of that licensee's antenna thus should be processed and granted promptly.

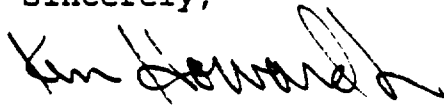
In addition, the FCC's Antenna Survey Branch should immediately take notice of Nationwide's application and amend its records to indicate that--contrary to the false claim of Four Jacks Broadcasting Inc. in application BPCT-910903KE--Four Jacks does therein propose to raise the existing tower's height at this

Ms. Donna R. Searcy
February 19, 1992
Page 4

location. This fact is simply incontrovertible, and the tower's existing height must be accurately recorded in the FCC and FAA records so that proper procedures will be followed in processing Four Jacks' application. Scripps Howard is separately arguing in a Petition to Deny that Four Jacks' continuing pattern of misconduct in concealing the true height of this tower, inter alia, warrants the dismissal of its application.

Please contact the undersigned if you require any additional information.

Sincerely,



Kenneth C. Howard, Jr.
Counsel to Scripps Howard
Broadcasting Company

0749:2789
9911091008
Attachment

cc: Chief, Mass Media Bureau, FCC
Chief, Video Services Division, FCC
Chief, Television Branch, FCC
Chief, Field Operations Bureau, FCC
Chief, Public Service Division, FCC
Chief, Antenna Survey Branch, FCC
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VIA HAND-DELIVERY:

Ms. Donna Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: FCC File No. BPH-911206IF

Dear Ms. Searcy:

This letter is written on behalf of Cunningham Communications, Inc., the owner of the tower specified in the above-referenced application. It has come to our attention that Nationwide Communications, Inc. ("Nationwide"), a lessee of antenna space on our tower, without knowledge or notice to us as the lesser/owner, has volunteered an application, the purpose of which is "to report a decrease in the height of the antenna supporting structure." (We have been advised that to effect a reduction in tower height no application is necessary.)

The purpose of this letter is to request that the Commission not change its database with regard to the height of the antenna structure because there is pending an application BPCT-910903KE which proposes to use the antenna structure presently authorized. We have been advised by the Commission staff that no notification with respect to tower height is necessary where there is a pending application to use the full height of the tower.

Nationwide, the party seeking to change the Commission's database is not the owner of the tower. Therefore its

Ms. Donna Sarcy
February 11, 1992
Page 2

application should be dismissed because it had no actual or apparent authority for making its filing and because there is a pending proposal to use the full height of the present structure.

Very truly yours,



Martin R. Leader

MRL/dp
3070-014

cc: Edward W. Hummers, Jr., Esq.

Ms. Donna R. Searcy
February 19, 1992
Page 5

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